IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 1052 of 2007

Date of Decision : 23.01.2007

Bishambar Dass ... Petitioner

Versus

State of Punjab and others. .. Respondents

CORAM : HON'BLE MR. JUSTICE J.S. KHEHAR,
HON'BLE MR. JUSTICE S.D. ANAND.

Present : Mr. Manohar Dadwal, Advocate,
for the petitioner.

J.S. Khehar, J. (Oral)

The petitioner desired that the legal notice issued by him dated 17.11.2005, contesting the seniority position assigned to him, should be decided. Since, no decision was taken on the aforesaid legal notice by the State Government, the petitioner approached this Court by filing Civil Writ Petition No. 8317 of 2006, and the same was disposed of by an order dated 25.05.2006, with a direction to the Director Public Instruction (Schools), Punjab, to take a final decision on the legal notice dated 17.11.2005. Consequent upon the issuance of the aforesaid direction, the Director Public Instruction (Secondary Education), Punjab, has passed an order dated 22.08.2006, asserting that the seniority position assigned to the petitioner at serial No. 2254 in the cadre of Lecturers (Men) is fully justified. It is, therefore, that the instant writ petition has been filed at the hands of the petitioner so as to impugn the order dated 22.08.2006 passed by the Director, Public Instruction (Secondary Education), Punjab.

We have perused the impugned order dated 22.08.2006. It reveals, that the petitioner was inducted into service of the respondents for

the first time on ad hoc basis as a JBT Teacher with effect from 22.01.1973. His services were regularized as a JBT Teacher with effect from 01.04.1977. The petitioner was promoted as a Social Science Master in the first instance with effect from 11.01.1993, however, the date of the petitioner's promotion as Social Science Master was subsequently ante-dated to 06.11.1991. The petitioner was further promoted from the post of Social Science Master to the post of Lecturer vide order dated 22.10.1993/25.11.1993. The impugned order reveals, that the petitioner has been allowed seniority on the basis of the date of his promotion to the post of Lecturer (Men).

In order to contest the determination at the hands of the respondents, learned counsel for the petitioner has invited our attention to Rule 11 of the Punjab State Education Class III (School Cadre) Service Rules 1978. Rule 11 of 1978 Rules is being extracted hereunder:-

> "11. Seniority of Members of Service:- The seniority in each cadre of the service shall be determined on the basis of continuous length of service on a post in that cadre of the service;
>
> Provided that:
>
> i) in the case of members recruited by direct appointment the order of merit determined by the Commission, the Board or any other recruiting authority, as the case may be, shall not be disturbed.
>
> ii) in the case of two or more members appointed on the same date their seniority shall be determined in the following manner:-

a) a member recruited by direct appointment shall be senior to a member recruited otherwise;

b) a member appointed by promotion shall be senior to a member appointed by transfer;

c) in the case of members appointed by promotion or transfer, seniority shall be determined according to the seniority of such members in the appointments, from which they were promoted or transferred, and

d) in the case of members appointed by transfer from different cadres, their seniority shall be determined according to pay, preference being given to a member who was drawing a higher rate of pay in his previous appointment; and if the rates of pay drawn are also the same, then by their length of service, in those appointments and if, the length of such service is also the same, an older member shall be senior to a younger member.

Note: Seniority of members appointed on purely provisional basis, shall be determined as and when they are regularly appointed keeping in view the date of such regular appointment."

A perusal of the aforesaid rule reveals, that the inter-se seniority of members of the service holding the same post, and belonging to the same cadre, would be determined on the basis of the continuous length of service. It is not the case of the petitioner, that any person, in the final seniority list prepared by the respondents, has been shown senior to him, despite the fact

that such person was appointed as a Lecturer (Men) with effect from a date subsequent to the date of promotion of the petitioner as Lecturer (Men).

During the course of hearing, learned counsel for the petitioner acknowledged, that the petitioner was not in possession of the final seniority list, issued by the respondents. In such circumstances, it surprises us, how the petitioner could have filed the instant writ petition so as to raise a challenge to the order dated 22.08.2006 passed by the Director, Public Instruction (Secondary Education), Punjab, whilst he did not dispute even a single fact pertaining to his entry into service and his promotions from time to time, as also the fact noticed therein, namely, that his seniority in the cadre of Lecturer (Men) had been determined on the basis of the date of his appointment to the said cadre.

In view of the above, we find no merit in the instant writ petition and the same is, accordingly, dismissed.

(J.S. Khehar)
Judge

January 23, 2007
vkd

(S.D. Anand)
Judge